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OFFICE OF PETITIONS

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WASHINGTON, DC 20004

In re Application of :
Covezzi, et al. : DECISION ON APPLICATION
Application No. 09/913,385 : FOR PATENT TERM ADJUSTMENT
Filed: August 13, 2001 :
Atty. Dkt. No.: US 18021 :

This is a decision on the "PETITION UNDER 37 CFR 1.703 TO CORRECT PATENT TERM ADJUSTMENT" filed September 26, 2005. This matter is being treated under 37 CFR 1.705(b) as an application patent term adjustment.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **DISMISSED**.

Applicants request that the Determination of Patent Term Adjustment be corrected from 772 days, as indicated on the Determination of Patent Term Adjustment mailed September 15, 2005, to an adjustment of 799 days.

A review of the application history reveals that as of the time of allowance, an adjustment of 799 days can be attributed to the Office. In accordance with 37 CFR 1.702(a)(1), an adjustment of 621 days can be attributed to the Office for failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed. The adjustment began October 14, 2002, the day after the date that is 14 months after the date that the application was filed, and ended June 25, 2004, the date the non-final Office action was mailed. See 37 CFR 1.703(a)(1).

A further adjustment of 178 days can be attributed to the Office in accordance with 37 CFR 1.702(a)(2) in accordance with 37 CFR 1.702(a)(2) for failure to respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken. The adjustment began February 23, 2005, the day after the date that is four months after the date that a reply to the non-final Office action was filed, and ended August 19, 2005, the date the Notice of Allowance was mailed.

The adjustment of 799 days was properly reduced 27 days in accordance with 37 CFR 1.704(b) for applicants' failure to engage

in reasonable efforts to conclude prosecution. The reduction began September 26, 2004, the day after the date that is three months after the date that the non-final Office action was mailed, and ended October 22, 2004, the date the response to the non-final Office action was filed.

Applicants argue that the application is entitled to an additional adjustment of 27 days because a Corrected Notice of Allowance was mailed 27 days after the mailing of the Notice of Allowance.

Applicants' arguments have been carefully considered but are not found convincing. An adjustment of 178 days was attributed to the Office in accordance with 37 CFR 1.702(a)(2) for failure to mail the Notice of Allowance within four months of applicants' response to the non-final Office action. The fact that a Corrected Notice of Allowance was subsequently mailed does not negate the fact that the Notice of Allowance mailed August 19, 2005 was properly mailed within the meaning of 35 USC 151 and 37 CFR 1.311. Accordingly, applicants are not entitled to an additional adjustment relative to the mailing of a corrected Notice of Allowance.

Accordingly, at the time of allowance, the application is entitled to an adjustment of 772 days, as indicated in the Notice of Allowance.

The fee required in connection with an application for patent term adjustment under 37 CFR 1.705 is currently \$200.00. Accordingly, applicants' request for a refund is hereby dismissed. Moreover, at the time of submission of the instant petition, applicants submitted \$130.00. The remaining \$70.00 has been charged to applicants' deposit account as authorized.

The application file is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.



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